IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 28461 of 2007(L)

PETITIONER:

S.K. PRADEEP, S/O. SRI.C.SASIDHARAN,
AJI BHAVAN, PARMBUKONAM, MOTTAMOODU,
NARUVAMOODU, TRIVANDRUM.

BY ADV. SRI.T.K.ANANDA PADMANABHAN
SMT.S.LAKSHMY (ATTINGAL)

RESPONDENTS:

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1. SECRETARY,
KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVANAM
PATTOM PALACE POST, TRIVANDRUM.

2. CHIEF ENGINEER (HRM),
KERALA STATE ELECTRICITY BOARD,VYDHYUTHI BHAVANAM,
PATTOM PALACE POST, TRIVANDRUM-04.

3. EXECUTIVE ENGINEER,
ELECTRICAL DIVISION (WEST), KERALA STATE
ELECTRICITY BOARD, TRIVANDRUM.

BY SRI.K.S.ANIL, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P (C) No. 28461 of 2007

Dated this the 3rd December, 2007

J U D G M E N T

Petitioner's father late Sasidharan was a Lineman in the Electricity Bard. Due to ill-health he was unable to perform his duties. On the basis of the certificate issued by the Medical Board, Sasisdharan was allowed to retire from service on invalid grounds with effect from 27.3.2004.

2. Petitioner had applied for appointment under the compassionate employment scheme. Exhibit P2 contains the regulations governing the appointment of persons under Dying in harness scheme on compassionate grounds relating to the retirement of employees of the Board on permanent disability or retirement on invalid pension. Clause 7 of Exhibit P2 regulations states that dependent of a Board employee, who retires on the ground of mental infirmity or permanent incapacity for work or on any similar ground shall also be eligible for appointment under these regulations provided, the period from the date of such retirement to the normal date of retirement of the board employee on superannuation is five years or more. Petitioner’s father late Sasidharan would have attained the normal age of

superannuation in July, 2006 and therefore by Exhibit P2 regulations, an application could not have been maintained by the petitioner for appointment on compassionate grounds, according to the Board.

3. As a matter of fact, the petitioner's application was considered by the Electricity Board but it was rejected on the premise that in the Board Meeting held on 19.2.2007, the Board had decided to restrict employment under Invalid Pension Scheme only to the dependents of those board employees who have availed themselves of invalid pension due to 100% permanent disability from accidents which arose out of and in the course of duty under the Board. Regularisation was made only in relation to the dependents of Board employees who retired on invalid grounds and who applied for compassionate appointment prior to 27.9.2002. In such cases, applications are to be decided by Full Time Members on merit on a case to case basis. This is evidenced by Exhibit P5. Exhibit P3 application was rejected under Exhibit P6, which has been challenged in this writ petition.

4. Learned counsel for the petitioner submits that when statutory regulations by way of Exhibit P2 do not contemplate a restriction with regard to the eligibility of dependents of Board employees who have retired on invalid pension, the Board cannot take a decision at variance with the regulations and then reject applications on the basis of such decision. This would amount to an executive decision at variance from statutory regulations.

5. From a reference to Exhibit P2 it can be seen that even according to the regulations, the petitioner would not have been eligible to apply for appointment on compassionate grounds, in circumstances where the time between the date on which the petitioner's father retired on grounds of invalid pension and the actual date on which he would have retired on superannuation viz., April 2006 was less than five years. Even otherwise I do not think there is anything arbitrary or illegal about the Board which, any way, is the authority to frame regulations under Section 79 read with Section 15 of the Electricity (Supply) Act, to take a decision to restrict the consideration of applications of dependents of Board employees to cases where retirement of the Board employee was on

account of 100% disability arising from accidents which had occurred in the course of his duty. I am of the view that since the decision referred to in Exhibit-P4 seems to have been taken by the Board which is the Authority that had framed Exhibit-P2 regulations, it cannot be said that such a decision is invalid. It also will have to be borne in mind that the employer is entitled to restrict the zone of consideration relating to applications for employment on compassionate grounds especially, in circumstances where the number of the applications received and the total number of vacancies that might be available for appointment under the dying in harness scheme are vastly disproportionate.

For all these reasons I am of the view that there are no grounds to interfere with the decision taken by the Board. Hence the writ petition is dismissed.

(V.GIRI, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007